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WORLD INTELLECTUAL PROPERTY ORGANIZATION
GENEVA

INTERGOVERNMENTAL COMMITTEE ON INTELLECTUAL PROPERTY AND GENETIC RESOURCES, TRADITIONAL KNOWLEDGE AND FOLKLORE

Sixteenth Session
Geneva, May 3 to 7, 2010

**POLICIES, MEASURES AND EXPERIENCES REGARDING INTELLECTUAL
PROPERTY AND GENETIC RESOURCES: SUBMISSION BY THE CENTER FOR
PEACE BUILDING AND POVERTY REDUCTION AMONG INDIGENOUS AFRICAN
PEOPLES (CEPPER)**

Document prepared by the Secretariat

1. At its fifteenth session, held from December 7 to 11, 2009, the Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore ('the Committee'):

“invited Member States and observers to make available to the Secretariat papers describing regional, national and community policies, measures and experiences regarding intellectual property and genetic resources before February 12, 2010, and requested the Secretariat to make these available as information documents for the next session of the Committee.” [...]

2. Further to the decision above, the WIPO Secretariat issued a circular to all Committee participants, dated January 15, 2010, recalling the decision and inviting participants to make their submissions before February 12, 2010.

3. Pursuant to the above decision, the Center for Peace Building and Poverty Reduction among Indigenous African Peoples (CEPPER), an accredited observer to the Committee, submitted a document entitled “Intellectual Property and Genetic Resources in Africa – Indigenous Communities in the Context of Nigeria” and requested it be made available as an information document for the sixteenth session of the Committee.

4. The document is reproduced in the form received and contained in the Annex to this document.

[Annex follows]

ANNEX

INTELLECTUAL PROPERTY AND GENETIC RESOURCES IN AFRICA
INDIGENOUS COMMUNITIES IN THE CONTEXT OF NIGERIA

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Executive summary

African intellectual property environment is generally marked by contradictions that produce conflicts among stakeholders in their relationship to each other. The intellectual property protocol is riven by epistemic, cultural, legal, political, bureaucratic, commercial and technological rivalry, gaps and schemes. This state of affairs have tremendously affected and worsened the under developed state of IP infrastructure in the continent and in separate countries. Majority of populations, especially indigenous communities continued to be deprived the consummate enjoyment of their intellectual property rights both by state created omission and commission. Genetic resource rights of the indigenous communities have become victims. One fact which is borne out of field work and contacts with indigenous peoples in Wawa land (Ani, WIPO 14th session), Ijaw land, Ngwa land (Mgbeoji, Ikechi, WIPO Tenth session, 2006) and other indigenous communities in Nigeria and Africa (Fredie Thomsons, 1989) is the existence an array of wild and domestic genetic resources made up animals, plants and other substances used both for food, medicinal therapy and other psychosomatic spiritual functions. The second fact is that these pre-existent genetic resources belonging to indigenous peoples had an authentic customary framework for transmission, protection and sharing of its intellectual property under customary law (Theodore, Riches of the Bush People, Turntil Press, 1967).

The third fact is that this customary law recognizes group property rights and ownership of traditional genetic resources whereas 90% of government protocols on genetic resources reflect an aggressive western patent system which is at variance with the customary IP rights known to communities for decades.

The effort by WIPO towards the establishment of a new international intellectual property that will be integrative and inclusive of the values and concepts found within indigenous customary law and jurisprudence complements the work of IP right holders and NGOs to protect the IP rights and genetic resources of indigenous communities in Africa. This will definitely enhance the Africa capacity and ability of African indigenous communities to protect, transmit and benefit from their genetic resources and derivable TK and pharmacy. To berth safely on this intellectual shore of a new international IP protocol, I have always advocated the convening of an African multi-stakeholders fora in select African countries between government, traditional communities, civil society and WIPO on a consultative rotational basis towards the rediscovery and formal identification of the traditional protocols for articulating, recognizing, protecting, transmitting and sharing intellectual property among Africans, especially regarding genetic resources. I will simply

but strongly plead for this position as a sure reliable means our attaining our goals quickly in addition to the intercessionals on other areas of TK.

Challenges and problems facing TK of Genetic Resources in Wawaland/Africa

The traditional knowledge of genetic resources and bio-diversity face enormous corrosive and adverse influences ((Mobeoji, WIPO IGC, Peratt... 10th session, P.2) both governments, international IP protocols/agreements, religions bodies and pharmaceutical companies. For the purposes of properly identifying these challenges, it is important to identify traditional knowledge of medicinal plants, its profile, applications as being on the same pedestal with its pharmaceutical derivatives. It is relevant to focus upon this traditional medical knowledge of plants and its pharmaceuticals derivatives as a result of the modern exploitation of traditional medical pharmacopia and denudation of its rich biodiversity by certain western pharmaceutical companies encouraged and protected by a patent system forced upon traditional system and its indigenous peoples, denying them the full enjoyment of thier intellectual property rights derivable from thier genetic resources. Technology has played a big role in encouraging this systematic pillage. There is reluctance on the part of government patent system to recognize that “the concept of power of attorney” in the ownership of medicinal plants, it uses and derivatives belong to indigenous communities who are the right holders. Manufactory of synthetic products as derivatives of the native plants cannot deprive the native people of customary intellectual rights of ownership.

Secondly in most countries of Africa governments fail to recognize the legitimacy of traditional medical knowledge and practice. In countries where efforts are made at legislation, such as in Nigeria, to govern and regulate the practice of traditional medical knowledge, regulatory laws had been shaped after western Europe medical knowledge systems with orthodox medical practitioners given the powers to evaluate and determine what constitutes traditional medical knowledge!

Furthermore, there has not been a formal incorporation of intellectual property rights of genetic resources into government’s prevailing IP protocols except in few countries in Africa.

Again, there has been a constant exclusion of indigenous communities in Nigeria from participating from national seminars on intellectual property rights and genetic rights.

Moreover, there is the incidence of regular non-inclusion of civil society groups and rights holders from contributing to the determination of new trends and protocols that will protect genetic resources and herbal medical practice in the continent.

There is also disparate, uncoordinated and conflictious existence of parallel IP structures in the same country with rivalrious outcomes which serve to undercut the growth of not only intellectual property but helps to promote the continuous non recognition of, and exploitation of the genetic resources and herbal knowledge of indigenous communities.

Equally obvious is the lack of a pre-existing intellectual property informational infrastructure both in Nigeria and most countries in Africa, where there are two intellectual property bodies with divisive linguistic behaviours that fail to come up with a common position on the protection mechanism for genetic resources in the continent.

Finally, there is a continuous decimation of the biodiversity and genetic resources in Nigeria under the aegis of aggressive oil exploration and the industrial research by pharmaceutical companies.

Measures aimed towards protection

(1) Customary law and values must be recognized as the pre-existing framework for protecting and sharing the intellectual property rights of indigenous peoples over their genetic resources. This position must inform all efforts aimed at protecting and transmitting the genetic resource of indigenous communities in Africa.

(2) Current international, regional or national government protocols on TK/genetic resources must undertake immediately legal and statutory reviews to integrate customary, cultural and traditional IP rights

(3) All stakeholders must start to give TK compliant value and meaning to all epistemic systems under the current intellectual property protocols towards the establishment of an IP system that recognizes the rights of indigenous peoples to the protection and transmission of their genetic or derivable resources.

(4) To stop all industrial manufactory of genetic or derivative pharmaceutical resources of indigenous people until the prior consent of the people is secured in a free mutually agreeable manner which obeys the spirit of the universal declaration of indigenous peoples rights.

(5) To let oil companies in the Niger Delta to engage indigenous communities as a first stopgap measure towards ending decimation of their genetic and bio resources through oil exploration and engagement of oil communities along the lines of best practices in environmental and intellectual property rights.

(6) African countries should come up with a legislative bill aimed towards the protection, promotion and beneficial use of the genetic resources of indigenous peoples and the promotion of their IP rights. WIPO should give technical support for the drafting of such legislation.

(7) Establishment of Nigeria's Intellectual Property Organization (NIPO) towards the integration of all the parallel ministries, parastatals such as the ministries of commerce, industry, technology and information where IP issues such as copyright, patents, designs, herbal medicine (genetic resources) are currently dealt with in an uncoordinated but detrimental manner that denigrates the genetic rights of indigenous peoples in the country.

Incidents of Misuse/Abuse

(1) Bio-piracy

Pharmaceutical companies make use of the genetic resources of indigenous peoples in Nigeria without their prior consent by

(a) Use of TK in the manufacture of raw drug varieties.

- (b) Use of rich varieties of indigenous plants for drug manufacture.
- (c) Use of native deposit of chalk for production aspirin and paracetamol etc.

(2) Environmental degradation

Oil exploration has led to the massive environmental atrophy and decimation of the fauna of indigenous people in the oil exploration communities in Africa – leading to heavy loss of biodiversity and genetic resources

(3) Religious violation of the IP rights of indigenous communities to practice and promote and protect their TK and genetic resources towards their beneficent application. Open bigotry and persecution of indigenous medical healers who are openly demonised as ‘witches’

(4) Use of Eurocentric and orthodox medical methodology to evaluate and ‘approve’ licences for traditional healers who have knowledge of TK and genetic resources. TK has a holistic as against an allopathic approach used by western medicine. This brings a lot of prejudice against these traditional healers. Today in Nigeria their population is not known and knowledge of genetic resources at their disposal is becoming extinct.

Conclusion

The experience of the Wawa indigenous people in protecting and preociting assure of their genetic resources reflect challenges faced by indigenous people not only in Nigeria but Africa. The experience, challenges and problems met by indigenous communities in Africa should assist WIPO in making reasoned and relevant technical inputs in the construction of a new global IP protocol that will reflect the interests of local communities. Towards this end, it has become necessary to come up with new word clarifications of what should constitute sujet areas for protection:

(1) What should be protected?

The subject of protection should be the traditional knowledge of genetic resources as expressed in food, medicine, animals, material substances and ritual connected with them. The subject is to be expanded to include not just genetic but also mineral resources found in the earth which formed part of the TK power of indigenous people and, collectively, accounted for their preservation and perpetuation as a people over the centuries. In this respect, plant and animal varieties should be inclusive of all their synthetic and bio-derivative knowledge and products used by industries to build upon native traditional knowledge.

(2) What should be the rules of protection?

The rules of protection should cover such areas as the

- Jurisprudence of protection
- Subject matter

- Prior consent
- Mutual benefit and beneficent application of genetic resource
- Prevention modalities

(3) Who should be protected?

Those that should be protected are the practitioners and right holders to TK and genetic resource in indigenous communities in Africa. They should be protected from humiliation, degradation, physical harm and deprivation of benefits arising from misuse, abuse and misappropriation by governments, religious bodies, industries and pharmaceutical companies.

[End of Annex and of document]